

## Message Text

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TAGS: PINT, PGOV, CA

SUBJ: CONSTITUTIONAL IMPLICATIONS OF SUPREME COURT  
DECISION ON ANTI-INFLATION ACT

REF: OTTAWA 2817

1. BEGIN SUMMARY: AFTER FLURRY OF INITIAL COMMENTARY THAT SUPREME COURT'S ANTI-INFLATION ACT DECISION (REFTEL) BROKE DRAMATIC NEW CONSTITUTIONAL GROUND, RECENT INFORMED COMMENT SUGGESTS THAT COURT NEATLY LIMITED CONSTITUTIONAL THRUST OF ITS DECISION WHILE TAKING INTO ACCOUNT PRACTICALITIES OF PRESENT CANADIAN ECONOMIC SITUATION. DECISION PROVIDES SOME CLARIFICATION IN MURKY AREA OF DIVISION BETWEEN FEDERAL AND PROVINCIAL ECONOMIC JURISDICTION BUT DOES NOT APPEAR TO HAVE ALTERED GREATLY THE BASIS BALANCE. END SUMMARY.

2. UNDER TRADITIONAL INTERPRETATION OF BRITISH NORTH AMERICA ACT (BNA) FEDERAL GOVERNMENT ALLOWED TO ENCROACH ON PROVINCIAL REGULATION OF PROPERTY AND CIVIL RIGHTS ONLY IN TIMES OF NATIONAL EMERGENCY TO MAINTAIN PEACE, ORDER AND GOOD GOVERNMENT (RESERVED TO FED GOV UNDER SEC 91 OF BNA). AND THIS GIVEN VERY NARROW SCOPE. GREAT  
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DEPRESSION IN 1920S AND 1930S, FOR EXAMPLE, NOT CON-

SIDERED SUFFICIENT NATIONAL EMERGENCY AT THE TIME. DOCTRINE OF NATIONAL EMERGENCY REFINED IN 1947 WHEN PRIVY COUNCIL DECREED THAT A MATTER OF CONCERN TO THE NATION AS A WHOLE WITHOUT EXISTENCE OF NATIONAL EMERGENCY COULD ALLOW FOR EXPANSION OF FEDERAL JURISDICTION.

3. IN ARGUING ANTI-INFLATION CASE, ATTORNEY-GENERAL OF CANADA CLAIMED ANTI-INFLATION ACT VALID SINCE CONTROLLING INFLATION HAD BECOME MATTER OF CONCERN TO THE NATION AS A WHOLE. ONLY AS ALTERNATIVE ARGUMENT IF THIS NOT UPHELD DID HE CLAIM EXISTENCE OF NATIONAL EMERGENCY.

4. DIFFERENCE BETWEEN TWO RATIONALES IMPORTANT SINCE STATE OF EMERGENCY MEANS FEDERAL INTERVENTION EXCEPTIONAL, LIMITED AND TEMPORARY. MATTER OF CONCERN TO NATION AS A WHOLE HAS IMPLICATION OF MORE EXTENDED FEDERAL JURISDICTION.

5. SUPREME COURT REJECTED CONCERN-TO-NATION-AS-A-WHOLE ARGUMENT. IT DID, HOWEVER, VALIDATE ACT UNDER EMERGENCY RATIONALE. THUS WHILE COURT EXPANDED EMERGENCY RATIONALE BEYOND EXTREMES OF WAR, PESTILENCE AND FAMINE AND INFO AREA OF ECONOMIC CRISIS, IT KEPT FEDERAL POWER IN THIS FIELD LIMITED AND TEMPORARY.

6. COURT DID NOT ITSELF RULE ON MERITS OF ARGUMENTS AS TO WHETHER OR NOT AN ECONOMIC CRISIS EXISTED. RATHER, IT FOUND THAT EXISTENCE OF ECONOMIC CRISIS WAS FOR PARLIAMENT TO DETERMINE AND THAT PARLIAMENTARY DECISION WILL PREVAIL UNLESS COURT WAS PRESENTED WITH EVIDENCE THAT THERE WAS NO RATIONAL BASIS FOR SUCH A DECISION BY PARLIAMENT.

7. WHILE UPHOLDING ANTI-INFLATION ACT, COURT INVALIDATED FEDERAL-ONTARIO AGREEMENT MAKING ANTI-INFLATION GUIDELINES APPLICABLE TO ONTARIO PUBLIC SECTOR. THAT AGREEMENT WAS REACHED WITHOUT ASSENT OF ONTARIO LEGISLATURE. COURT HELD THAT, SINCE PROVINCIAL EXECUTIVE HAS NO INHERENT POWER TO MAKE OR CHANGE THE LAW, THE ONTARIO GOV REQUIRED SOME AUTHORITY FROM THE ONTARIO LEGISLATURE BEFORE IT COULD LIMITED OFFICIAL USE

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REACH AN AGREEMENT WHOSE EFFECT WAS TO CHANGE ONTARIO LAW. OPINION, THEREFORE, SUPPORTED POWER OF PROVINCIAL LEGISLATURE AND EMPHASIZED FUNDAMENTAL CONSTITUTIONAL DOCTRINE OF SEPARATION OF POWERS BETWEEN LEGISLATIVE AND EXECUTIVE.

8. COMMENT: SUPREME COURT'S DECISION IN THE CASE REVEALS NEAT BALANCING ACT BETWEEN CONTENDING

FORCES AND AN APPRECIATION OF BOTH PRACTICAL NECESSITY  
AND JUDICIAL RESTRAINT. A COURT RULING THAT ANTI-  
INFLATION ACT WAS INVALID WOULD ITSELF HAVE INTRODUCED  
BONA FIDE ECONOMIC CRISIS. REVOCATION OF MYRIAD LABOR  
AGREEMENTS UNDER THE ACT WOULD HAVE RESULTED  
IN EQUAL PARTS UNCERTAINTY AND CHAOS AT A TIME WHEN  
CANADIAN ECONOMY IS SHAKY ENOUGH. COURT WELL AWARE OF THIS  
FACT WHEN MAKING DECISION. AT SAME TIME, COURT DID NOT  
GREATLY ALTER FEDERAL/PROVINCIAL BALANCE: EXPANDED  
DEFINITION OF FEDERAL EMERGENCY POWER WAS COSMETICALLY  
BALANCED BY REAFFIRMATION OF PROVINCIAL LEGISLATIVE  
POWER. DECISION, IN SHORT, JUDICIOUSLY LEFT NEARLY ALL  
PARTIES (WITH EXCEPTION OF ORGANIZED LABOR TO WHICH ANTI-  
INFLATION PROGRAM IS ANATHEMA) ONLY MILDLY UNHAPPY.  
ENDERS

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